



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

*Rec'd 12-3-04 by certified
mail, Consumers Energy
Secretary's office
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EPA Index #5*

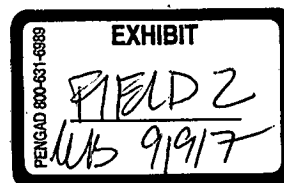
NOV 05 2004

REPLY TO THE ATTENTION OF:

SE-5J

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas A. McNish, Resident Agent
CMS Capital Corporation
Fairlane Plaza South
330 Town Center Drive - Suite 1100
Dearborn, MI 48126



Re: Little Traverse Bay CKD Release Site
Emmett County, Michigan (see attached property description)

General Notice of Potential Liability

The United States Environmental Protection Agency (U.S. EPA) has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the above-referenced facility and is considering the expenditure of public funds to investigate and control these releases. Any action will be taken by U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (SARA), unless U.S. EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the facility, persons who generated the hazardous substances, and persons who were involved in the transport, treatment, or disposal of the hazardous substances at the facility. Under Section 107(a) of CERCLA, where U.S. EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the facility, including investigation, planning, and enforcement costs.

U.S. EPA is currently considering the following actions at the above-referenced facility:

1. Provide Site security and restrict access to known "cement kiln dust" (CKD) leachate releases to the north and east of Coastal Drive (seep areas) by constructing fences and posting warning signs which specifically warn of the potential threats associated with direct contact with the leachate release;
2. Prepare a Site Health and Safety Plan, Site Control and Access Management Plan;

3. Perform comprehensive evaluations of all other areas along lakeshore of property, formerly operated by Penn-Dixie with the objective of identifying additional leachate releases which may not have been identified, but may be causing a threat of direct contact or threat of release of contaminants to Lake Michigan;
4. Restrict access with fencing and signs to all releases identified during evaluation in Paragraph 1 above;
5. Implement recovery of all leachate from all leachate release areas and transport to secure off-site treat, storage and disposal facilities;
6. Maintain recovery and disposal of leachate wastes described in above paragraph until such time as additional engineering controls can be designed and constructed to prevent leachate release to the beach and surface waters of Lake Michigan;
7. Design, construct and implement operation of such interim recovery systems to prevent release of leachate to Lake Michigan beach and surface waters from leachate waste source areas;
8. Design and implement engineering controls to completely isolate and permanently contain CKD leachate source wastes or remove source areas (CKD piles).

U.S. EPA has received information that your organization may have owned or operated the facility or generated or transported hazardous substances that were disposed of at the facility. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a potentially responsible party, to agree to reimburse U.S. EPA for costs incurred to date and to voluntarily perform or finance the response activities which U.S. EPA has determined or will determine are required at the facility.

U.S. EPA is willing to meet with you, together with State and Tribal officials, to discuss the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse U.S. EPA for its costs. If a consent order cannot be promptly concluded, U.S. EPA may issue a unilateral order under Section 106 of CERCLA, requiring you to perform specified work. Under Sections 106 and 107 of CERCLA, you may be liable for reimbursement of U.S. EPA's costs, for statutory penalties, and for treble damages for non compliance with such an order. If you are a qualified small business, enclosed is an U.S. EPA Small Business Regulatory Enforcement Fairness Act information sheet which may be helpful if you are subject to an U.S. EPA enforcement action.

Because of the conditions described above, U.S. EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, U.S. EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

If you wish to meet with us, or need further information regarding this letter, please contact Rodger Field, Associate Regional Counsel of the U.S. EPA Office of Regional Counsel at (312) 353-8243. A meeting will need to be scheduled within 10 days of your receipt of this letter. Whether or not a meeting is scheduled, you should notify U.S. EPA within 14 days of your receipt of this letter of your willingness to perform or finance the activities described above and to reimburse U.S. EPA for its costs. Your responses should be submitted in writing to:

Valerie Mullins, Enforcement Specialist
U.S. EPA - Emergency Enforcement & Support Section
77 West Jackson Boulevard
Chicago, IL 60604-3590

If U.S. EPA does not receive a timely response, U.S. EPA will assume that your organization does not wish to negotiate a resolution of its potential responsibility in connection with the facility and your organization has declined any involvement in performing the response activities.

Your response should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with State or local authorities or involved in a lawsuit regarding this facility, you may continue such activities as you see fit.

Due to the nature of the problems at this facility and the attendant legal ramifications, U.S. EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely yours,



Thomas Geishecker, Acting Chief
Emergency Response Branch

Enclosures:

- (U.S. EPA Small Business Regulatory Enforcement Fairness Action information sheet)
- Property Description

cc:

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cc: - continued

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Respondents to General Notice Letter

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Bay Harbor, Michigan 49770

Arthur Tebo, Resident Agent
Bay Harbor Golf Club, Inc.
1 Boyne Mountain Road
Boyne Falls, Michigan 49713

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